A

ISMAIL GHULAM HUSSAIN & ORS v. NURUL SHUHADA YAAKUB & ANOR

COURT OF APPEAL, PUTRAJAYA
HAMID SULTAN ABU BACKER JCA
HANIPAH FARIKULLAH JCA
B LAU BEE LAN JCA
[CIVIL APPEAL NO: B-01(NCVC)(W)-511-08-2018]
15 OCTOBER 2019

C ***SUCCESSION:*** *Distribution of estate – Islamic law – Revocation of distribution order – Whether property fraudulently transferred by void instrument – Alteration on instrument – Whether alteration signed by Commissioner for Oaths – Whether failure to obtain initial of Commissioners for Oaths rendered instrument void – Commissioners for Oaths Rules 1993, r. 13(2)(c)*

D The appellants' appeal was principally to revoke the distribution order of the Land Office related to the appellants' mother's estate and the subsequent transfer of the property to the appellants' sibling, Rabiah, who had passed away and the transfer of the property by Rabiah to her daughter, the first respondent. The plaintiffs' also prayed for a rehearing of the distribution of their mother's estate. The plaintiffs' central contention was that the purpose E of signing the form was for the division of property according to 'faraid' and the form signed by them did not have any alteration and that Rabiah's name had been inserted without their knowledge. In essence, their complaint was that the property was fraudulently transferred by a void instrument. The High Court dismissed the plaintiffs' claim and hence this appeal. The F question for consideration by the court was whether the deletion and/or alteration of the instrument signed by the Commissioner for Oaths needed further initial of the parties as well as the Commissioner for Oaths.

Held (allowing appeal)
Per Hamid Sultan Abu Backer JCA delivering the judgment of the court:

G **(1)** The trial judge had not dealt with the alteration and/or deletion in a statutory form under s. 8(1) of the Small Estate (Distribution) Act 1955. If such alteration and/or deletion in law is not validly done, the instrument for registration will be void. The alteration, deletion or modification, if any, has to be signed or initialled by all relevant parties H or else, it will not subscribe to the jurisprudence related to *consensus ad idem*. In this case, Rabiah's name had been inserted without the initial from the Commissioners for Oaths and therefore, did not comply with r. 13(2)(c) of the Commissioners for Oaths Rules 1993. As the case was related to family distribution order, and the parties were residing in the I premise and the forms were not strictly in compliance with the law, the instruments related to 'borang persetujuan' was not only void but also a nullity in law. (paras 4 & 8)

Case(s) referred to:
Dr ST Singam v. Lee Siew Leong [2007] 1 CLJ 401 CA ***(refd)***
Mohd Affandi Yusoff v. Hong Leong Bank Bhd & Anor [2019] 4 CLJ 755 CA ***(refd)***

Legislation referred to:
Commissioners for Oaths Rules 1993, r. 13(2)(c)
Small Estates (Distribution) Act 1955, s. 8(1)

For the appellants - Adnan Abdul Rahim, Siti Fatimah Ali Asgar & Nurul Nadzirah Norazlan; M/s Adnan Rahim & Co
For 1st respondent - Adenan Ismail; M/s Adenan & Assocs
For 2nd respondent - Siti Fatimah Talib & Husna Abdul Halim; Legal Advisors

[Editor's note: For the High Court judgment, please see Ismail Ghulam Hussain & Ors v. Nurul Shuhada Yaakub & Anor [2018] 1 LNS 1200 (overruled).]

Reported by S Barathi

JUDGMENT

Hamid Sultan Abu Backer JCA:

[1] The appellants' appeal is principally to revoke the distribution order of the Land Office related to the appellants' mother's estate and the subsequent transfer of the property to the appellants' sibling named Rabiah who has passed away and the transfer of the property by Rabiah to her daughter, the first respondent. The prayers in the statement of claim of the appellants read as follows:

Terhadap Defendan Pertama untuk:

(a) Pembatalan Perintah Pembahagian Harta Pusaka Simati, Ambong Binti Abdullah yang dikeluarkan dibawah Guaman Pembahagian No. JKPTG/PK/10/09/153/2005 oleh Pentadbir Tanah, Pejabat Daerah dan Tanah Gombak pada 07.09.2005;

(b) Pembatalan Perintah Pembahagian Harta Pusaka Simati, Rabiah Binti Gulam Hussain yang dikeluarkan dibawah Guaman Pembahagian No. JKPTG/PK/10/09/0467/2012 oleh Pentadbir Tanah, Pejabat Daerah dan Tanah Gombak pada 13.03.2013;

(c) Perbicaraan semula berhubung Pembahagian Harta Pusaka Simati, Ambong Binti Abdullah;

(d) Satu Perintah Injuksi menurut seksyen 52 Akta Relif Spesifik 1950 yang menghalang Defendan Pertama daripada berurusan di dalam apa-apa cara dengan atau menjual atau menyewa atau menduduki atau memindahmilik atau menandatangani apa-apa perjanjian jual beli dengan pihak lain atau mencagar atau menggadai atau mengamanahkan atau memasuki kaveat persendirian atau menjaiankan apa-apa kerja pengubahsuaian berkenaan hartanah yang dipegang di bawah hakmilik HSM 416, PT 8509, Mukim Batu, Sungai Tua Tambahan, Daerah Gombak, Selangor;

(e) Gantirugi hendaklah ditaksirkan dan dibayar oleh Defendan Pertama kepada Plaintif-Plaintif;

(f) Faedah 8% ke atas gantirugi dari tarikh pemfailan sehingga penyelesaian penuh dan muktamad;

(g) Kos;

(h) Dan sebarang Perintah dan/atau relif lain yang dianggap sesuai dan adil untuk diberikan oleh Mahkamah Mulia ini.

Terhadap Defendan Kedua untuk:

(a) Satu Perintah bagi mengarahkan Defendan Kedua untuk mengadakan Perbicaraan semula berhubung Pembahagian Harta Pusaka Simati, Ambong Binti Abdullah;

(b) Satu perintah mengarahkan Defendan Kedua mengambil semua tindakan bagi memberi kesan kepada perintah-perintah dalam perintah ini;

(c) Dan sebarang Perintah dan/atau relif lain yang dianggap sesuai dan adil untuk diberikan oleh Mahkamah Mulia ini.

[2] The central contention of the appellants at the trial was that whatever papers they have signed was in respect of a request to obtain distribution order from the Land Office for the property to be distributed by 'Faraid' under the Shariah law. In essence, in our own words, the appellants complain that the property was fraudulently transferred by a void instrument.

[3] After hearing the submission, we posed a question whether the deletion and/or alteration of the instrument signed by the Commissioner for Oath needs further initial of the parties as well as Commissioner for Oaths. We adjourned the matter for further submission.

[4] The learned judge here had set out the facts but had not dealt with the alteration and/or deletion in a statutory form under s. 8(1) of the Small Estates (Distribution) Act 1955 (Act 98). If such alteration and/or deletion in law is not validly done, then the instrument for registration will be void. In this case, the property was not transferred for consideration to the third parties who are *bona fide* purchasers for value. The relevant forms in issue are at pp. 149 to 156 vol. 2 of the appeal records. It is sufficient to reproduce the form at p. 149 to show that the alteration and/or deletion was not initialled as required under r. 13(2)(c) of the Commissioners for Oaths Rules 1993.

A

BORANG PERSETUJUAN

Akta Pembahagian Harta Pusaka Kecil 1955

Negeri : Selangor Daerah : Gombak

JKPTG/PK/10/09/193/2005

Guaman Pembahagian No : ..... Tahun : 2005

B

Harta Pusaka Am Bang Bin Abdullah simati

Nama Pemohon Rabiah Binti Gulam Hussain

Saya Ismail Bin Gulam Hussain No. K/P 561025-10-5045

yang beralamat 8509 Jln Kanan, Kg Nakhoda, 68150 Batu Caves.

C

dengan sesungguhnya serta dengan suci hati mengaku bahawa simati yang tersebut di atas meninggalkan harta pusaka berikut:-

(A) No. Hakmilik	No. Lot	Mukim	Daerah
HSM 416	8509	Batu	Gombak

D

(Jika tidak mencukupi sila gunakan lampiran lain dan perlu ditandatangan)

(B) Harta Alih

E

(Jika tidak mencukupi sila gunakan lampiran lain dan perlu ditandatangan)

2. Saya adalah waris simati yang berhak menuntut harta pusaka simati yang tersebut diatas, dan saya bersetuju harta pusaka simati dibahagikan seperti berikut:-

F

a) ~~Mengikut hukum syarak (faraid)/Akta Pembahagian 1/86 (bagi bukan Islam)~~

*b) ~~Mengikut muafakat seperti jadual disebelah~~

*c) Menyerahkan hak saya kepada Rabiah Bt Gulam Hussain

3. Saya mengaku apa-apa keterangan persetujuan yang tersebut di atas semuanya benar dan dibawah ini saya turunkan tandatangan saya.

G

Tandatangan (Orang Yang Membuat Persetujuan)

Dihadapan saya,

(Tandatangan Majistret, Pentadbir Tanah atau Pesuruhjaya Sumpah)

KOL (B) ILJ ANWAR BIN ISMAIL TUDM

Pesuruhjaya Sumpah yang tidak dikehendaki

Pejabat JKKK, Dewan Orang Ramai

Jalan Besar Selayang Baru

68100 Batu Caves, Selangor.

PESURUHJAYA SUMPAH NO: B137 KOL (B) ANWAR TUDM MALAYSIA

Tarikh : 2.9.05

H

I

Rule 13 of the Commissioners for Oaths Rules 1993 reads as follows:

13. Conduct and duties of Commissioner for Oaths.

(1) In the course of performing his duties, a Commissioner for Oaths shall pin at the top left shirt pocket an identification tag described in Form 5.

(2) In exercising his functions, a Commissioner for Oaths shall personally attend to any person requiring his services and shall:

(a) verify the identity, the personal particulars as given in the identity card or passport, and the address of the person making the declaration, affirmation, affidavit, oath, or statement before the Commissioner;

(b) read over and explain the contents of the documents and the exhibits attached thereto to the deponent or maker of the document, if the deponent or maker of the document is blind, illiterate or does not understand the language written in the document, before certifying that he has done so in the jurat;

(c) initial any alteration made in the document to be sworn or affirmed;

(d) not affix his seal to any document unless the deponent or maker of the document signs or affixes his thumbprint thereto before him;

(e) refuse the services of his office when the Commissioner has cause to suspect that any person before him is engaging in deception, fraud, duress, or any other illegal conduct;

(f) carry out the functions of his office in a prompt, reasonable and business-like manner; and

(g) make himself available to conduct all functions of his office at regular and reasonable hours.

(3) The jurat shall be in Form 6.

[5] This judgment must be read with the judgment of the learned judge for the purpose of comprehensiveness.

Brief Facts And Grounds Of Judgment

[6] The brief facts and the grounds of judgment as placed in a rudimentary manner before us is set out in *verbatim* to save judicial time. It reads as follows:

Brief facts:

1. The plaintiffs/appellants/PP are siblings to one another. Their mother died intestate on 14.9.1984. The other PP's siblings are Rabiah and Laiyak. Rabiah is the 1st defendant/1st respondent/D1's mother and D1 is the niece of PP. The dispute is regarding their mother's land in Daerah Gombak. After the mother died, the land was transferred to Rabiah and later to D1. D2 is the Land Office.

2. PP claimed that: PP had no knowledge that the ownership of the land had been transferred. P1 resided on the land and was served with notice to vacate the land on 2.8.2017. PP remembered that they were approached by Laiyak to sign some blank forms for Rabiah to facilitate the land and for the land to be distributed by Faraid. Laiyak and Rabiah had passed away in 2007.

3. PP prayed for: Distribution of The Mother's Estate Order by the land office to be revoked. Distribution of Rabiah's Estate Order by the land office to be revoked. Re-hearing of the Distribution of the Mother's Estate. Injunction against D1 from dealing with the land. Damages to be assessed. Costs and other suitable relief.

4. D1 stated that: PP waived their rights over the land. PP signed the waiver forms. The forms were signed in front of the Commissioner of Oath and unlikely to be blank as alleged by PP. PP and Laiyak constantly borrowed money from D1's mother/Rabiah and this was the consideration for them waiving their rights over the land. P1 beat up D1 for taking her own item from the house on the land. That was the reason P1 was served with notice to vacate the land.

5. High Court: PP's claim is dismissed with costs of RM20,000 to be paid to D1 and RM10,000 to be paid to D2.

Grounds of Decision of High Court

Whether PP's claim should be allowed.

6. He who alleges must prove. PP's claim is improbable for at least 2 reasons. PP was approached by Laiyak in 2005 and they did not inquire about the land for 2 years until Laiyak and Rabiah died in 2007. The non-interest shown by PP supports the fact that they had waived their rights over the land. PP only inquire about the land when they were slapped with the notice to vacate the land in 2017. This is an attempt to unlawfully usurp D1's ownership over the land and to save P1 from being evicted.

7. The blank paper as alleged by PP was not a blank form. There is no explanation as how their signature transplanted on a typewritten form. It is clear that PP are lying about this. Their signatures were witnessed by the Commissioner For Oath. PP never called the Commissioner For Oath and it is fatal to PP's case of fraud. D1 has indefeasible rights of the land. D2 is also not at fault.

[7] The memorandum of appeal of the appellants reads as follows:

1. Yang Arif yang terpelajar telah terkhilaf dari segi fakta dan atau undang-undang apabila gagal menimbangkan kehakiman semasa perbicaraan dan tidak membuat apa-apa dapatan dan atau arahan yang wajar dan sebaliknya telah tersalah arah apabila memutuskan bahawa Perayu-Perayu gagal membuktikan kesnya apabila Yang Arif gagal mengambil kira fakta bahawa tiada satu pun keterangan yang telah dikemukakan semasa perbicaraan yang menunjukkan bahawa Perayu-Perayu telah menerima Borang D (Notis Petisyen dan Pendengaran) bertarikh 10.08.2005 dari Responden Kedua yang mana:

A (a) Borang D tersebut tidak dihantar ke alamat sepertimana yang dinyatakan dalam Borang Persetujuan Perayu Kedua, Perayu Ketiga dan Perayu Keempat;

(b) Bukti penyampaian Borang D tersebut jelas menunjukkan bahawa Borang D tersebut telah diterima oleh individu bernama Laiyak Bin Ghulam Hussien bagi pihak Perayu-Perayu;

B

(c) Oleh sebab Perenggan (a) dan (b) diatas Perayu-Perayu tidak mempunyai pengetahuan berhubung perbicaraan pembahagian harta pusaka Ambong Binti Abdullah, simati yang diadakan pada 07.09.2005 di Pejabat Defendan Kedua.

C (d) Kegagalan Defendan Kedua untuk memastikan Borang D tersebut diterima oleh Perayu-Perayu menyebabkan perbicaraan permohonan pembahagian harta pusaka Ambong Binti Abdullah, simati adalah tidak teratur.

2. Yang Arif yang terpelajar telah terkhilaf dari segi fakta dan atau undang-undang apabila gagal menimbangkan secara kehakiman semasa perbicaraan dan tidak membuat apa-apa dapatan dan atau arahan yang wajar dan sebaliknya telah tersalah arah apabila memutuskan bahawa Perayu-Perayu gagal membuktikan kesnya apabila Yang Arif Hakim gagal mengambil kira fakta bahawa Perayu-Perayu hanya telah menandatangani borang persetujuan kosong bertarikh 11.04.2018 tersebut:

D

E (a) Tanpa mengisi butiran di dalam borang persetujuan bertarikh 11.04.2005.

(b) Perayu-Perayu tidak pernah menandatangani dan atau mengisi butiran di dalam borang persetujuan bertarikh 02.09.2005 yang mana:

F (i) Terdapat perbezaan yang ketara pada tulisan yang tertera di dalam borang persetujuan masing-masing bertarikh 11.04.2005 dan atau 02.09.2005;

(ii) Terdapat perbezaan yang ketara pada tandatangan Perayu Perayu yang tertera di dalam borang persetujuan masing-masing bertarikh 11.04.2005 dan atau 02.09.2005.

G

(c) Perayu-Perayu tidak pernah menandatangani borang persetujuan bertarikh 11.04.2005 dan atau 02.09.2005 di hadapan mana-mana Pesuruhjaya Sumpah.

H 3. Yang Arif yang terpelajar telah terkhilaf dari segi fakta dan atau undang-undang apabila gagal menimbangkan secara kehakiman semasa perbicaraan dan tidak membuat apa-apa dapatan dan atau arahan yang wajar dan sebaliknya telah tersalah arah apabila memutuskan bahawa Perayu-Perayu gagal membuktikan kesnya apabila Yang Arif Hakim gagal mengambil kira fakta bahawa terdapat dua (2) borang persetujuan yakni:

I (a) Borang Persetujuan bertarikh 11.04.2005; dan

(b) Borang Persetujuan bertarikh 02.09.2005

dalam permohonan pembahagian harta pusaka Ambong Binti Abdullah, simati yang ditandatangani di hadapan dua (2) pesuruhjaya sumpah yang berbeza.

4. Yang Arif yang terpelajar telah terkhilaf dari segi fakta dan atau undang-undang apabila gagal menimbangkan secara kehakiman semasa perbicaraan dan tidak mcmbuat apa-apa dapatan dan atau arahan yang wajar dan sebaliknya telah tersalah arah apabila memutuskan bahawa Perayu-Perayu gagal membuktikan kesnya apabila Yang Arif Hakim gagal mengambil kira fakta bahawa tiada keterangan sama ada Pentadbir Tanah telah menggunapakai borang persetujuan bertarikh 11.04.2005 dan atau 02.09.2005 dalam permohonan pembahagian harta pusaka Ambong Binti Abdullah, simati memandangkan tiada sebarang catatan yang terdapat dalam nota perbicaraan bertarikh 07.09.2005 berhubung pembahagian harta pusaka simati tersebut.

5. Yang Arif yang terpelajar telah terkhilaf dari segi fakta dan atau undang-undang apabila gagal menimbangkan secara kehakiman semasa perbicaraan dan tidak membuat apa-apa dapatan dan atau arahan yang wajar dan sebaliknya telah tersalah arah apabila memutuskan bahawa Perayu-Perayu membuktikan kesnya apabila Yang Arif gagal mengambil kira fakta bahawa Perayu-Perayu terutamanya Perayu Pertama telah mendapat maklumat berhubung hakmilik HSM 416, PT 8509, Mukim Batu, Sungai Tua Tambahan, Daerah Gombak, Selangor telah diserahkan kepada Allahyarhamah Rabiah Binti Gulam Hussain dan selanjutnya maklumat berhubung hartanah tersebut telah diserahkan kepada Defendan Pertama apabila Defendan Pertama pada sekitar bulan Julai 2017 bertindak untuk merobohkan sebuah rumah milik Perayu Pertama di atas hartanah tersebut tanpa sebarang notis mahupun Perintah dari Mahkamah yang mana:

(a) Pada ketika itu Perayu-Perayu khususnya Perayu Pertama telah mula sedar bahawa hak-hak mereka sebagai waris sah kepada tanah pusaka Ambong Binti Abdullah, simati telah terancam, dimungkiri, diperlekehkan dan dipersendakan;

(b) terdapat fraud dan penipuan pindah milik hartanah Simati kepada waris iaitu Allahyarhamah Rabiah Binti Gulam Hussain yang mana ianya adalah seperti berikut:

(i) Perayu-Perayu tidak pernah bersetuju untuk menyerahkan hak masing-masing kepada Allahyarhamah Rabiah Binti Gulam Hussain sepertimana butiran yang terdapat dalam Borang Persetujuan Perayu-Perayu khususnya di Perenggan 2 borang tersebut.

(ii) Perayu-Perayu tidak pernah membuat apa-apa penandaan persetujuan sepertimana yang terdapat dalam Perenggan 2 borang tersebut.

(iii) Butiran yang terdapat di Perenggan 2 borang tersebut adalah satu bentuk penipuan dan pemalsuan dokumen.

A (iv) Pindahmilik daripada Ambong Binti Abdullah, simati kepada Allahyarhamah Rabiah Binti Gulam Hussain dan transaksi diantara Allahyarhamah Rabiah Binti Gulam Hussain kepada Responden Pertama tidak menjadikan Responden Pertama sebagai "*bona fide* party" kerana proses pindahmilik dari Ambong Binti Abdullah simati kepada Allahyarhamah Rabiah Binti
B Gulam Hussain tersebut melibatkan suatu penipuan dimana pemilikan tersebut diperolehi secara *mala fide*, fraud, penipuan dan pemalsuan dokumen.

(v) Terdapat konspirasi dalam pembahagian harta pusaka Ambong Binti Abdullah, si mati.

C (c) Akibat daripada tindakan fraud dan penipuan berhubung pindah milik hartanah seperti yang dinyatakan di atas jelas timbul satu kerugian dan kehilangan kepada Perayu-Perayu selaku waris sah kepada tanah pusaka Ambong Binti Abdullah, simati.

6. Perayu-Perayu merezabkan haknya untuk memfailkan Memorandum
D Rayuan Terpinda sementara menunggu alasan penghakiman bertulis dari Mahkamah Tinggi Shah Alam.

[8] We have read the appeal records and the able submissions of the parties. After giving much consideration to the submissions of the respondents, we take the view that the appeal should be allowed. Our reasons
E *inter alia* are as follows:

(a) In the instant case, the plaintiffs' central contention as per para. 11 of the statement of claim was that the purpose of signing the form was for the division of property according to 'faraid'. For that purpose, the relevant forms filed in the Land Office was produced. (See the forms at
F pp. 149-156 of the appeal records – vol. 2). The plaintiffs said that the form they signed and was dated 11 April 2015 did not have any alteration to items 2(a) to (c) and subsequently the counsel says that Rabiah's name had been inserted without their knowledge. The name of Rabiah in the column has been inserted without initial from the
G Commissioner for Oath. We reproduce the form dated 11 April 2005 below:

H

I

BORANG PERSETUJUAN

Akta Pembahagian Harta Pusaka Kecil 1955

Negeri : Selangor Daerah : Gombak

Dusaan Pembahagian No : ..... Tahun : .....

Harta Pusaka Ambong Binti Abdullah simati

Nama Pemohon RABIAH Binti Ghulam Hussain

Saya Norlaini Binti Ghulam Hussain no. k/p 550701-10-6[illegible]

yang beralamat 66 Jalan PK. 9/30 Taman Sri Gombak 68100 Batu Caves

dengan sesungguhnya serta dengan sudi hati mengaku bahawa simati yang tersebut di atas meninggalkan harta pusaka berikut:-

(A) No. Hakmilik	No. Lot	Mukim	Daerah
P.M[illegible] 416	8509	Bdr	Gombak

(Jika tidak mencukupi sila gunakan lampiran lain dan perlu ditandatangani)

1. Saya adalah waris simati yang berhak menuntut harta pusaka simati yang tersebut diatas, dan saya bersetuju harta pusaka simati dibahagikan seperti berikut:-
   a) Mengikut hukum syarak (Faraid)/Akta Pembahagian 1/68 (bagi bukan Islam)
   *b) Mengikut muafakat seperti Jadual dipebalah
   /c) Menyerahkan hak saya kepada Rabiah Binti Ghulam Hussain

2. Saya mengaku ada[illegible] persetujuan yang tersebut di atas [illegible] benar dan dibuat [illegible] turunkan tandatangan saya.

Dihadapan saya: [illegible] W.728 HARON HASHIM

Tandatangan
(Orang yang Membuat Persetujuan)

[Tandatangan Majistret/Pentadbir Tanah atau Pesuruhjaya Sumpah]

Tarikh : 11 APR 2025

* Potong mana-mana yang [illegible]

[illegible] MALAYSIA

[illegible]

(b) We have taken substantial time to consider these forms and we came to the conclusion that the nature of the case being a family distribution order and the fact the parties were residing in the premise and the forms were not strictly in compliance with the law, we take that the instruments related to 'Borang Persetujuan' is not only void but a nullity in law.

(c) In addition, it is well-established even in a contract, if there is any alteration, deletion or modification, it has to be signed or initialled by all relevant parties or else it will not subscribe to the jurisprudence related to *consensus ad idem*. (See *Mohd Affandi Yusoff v. Hong Leong Bank Bhd & Anor* [2019] 4 CLJ 755; *Dr ST Singam v. Lee Siew Leong* [2007] 1 CLJ 401). In *Dr ST Singam*'s case, the Court of Appeal observed:

> [40] When a document or an instrument, on its production, appears to have been altered, it is the general rule that the party offering it in evidence must explain the alteration. Any material alteration in a written document or instrument, whether made by a party or a stranger is fatal to its validity, provided it was made after the document was executed and without the privity of the party to be effected by it and with the additional proviso that the alteration was made while the document was in the possession or in the control or the supervision of the party seeking to enforce it. As such the law on the material alteration of a document or deed is well settled in that a party who has the custody of an instrument or document made for his benefit is bound to preserve it in its original state and any material alteration of it will vitiate the instrument, if it was done without the consent of the other party.

(d) The learned judge had failed to give due consideration to law on this issue and in consequence, the integrity of the decision-making process has been compromised, warranting appellate intervention.

[9] For reasons stated above, we allow the appeal and grant prayers (a) to (d) against the first defendant. We do not think that this is a fit and proper case to order assessment of damages or interests, taking a holistic view and the facts that it involves family matter. All parties are at liberty to approach the Land Office for appropriate order under the law for the estate of Ambong binti Abdullah.

We hereby order so.